

Item No. 8.	Classification: Open	Date: 10 June 2021	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: St Georges Tavern, 14 Coleman Road, London SE5 7TG - Review	
Ward(s) or groups affected:		St Giles Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by the Southwark's Trading Standards Department in their role as Responsible Authority under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Patrick Holland in respect of the premises known as St Georges Tavern, 14 Coleman Road, London, SE5 7TG.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 12 to 15 of this report. A copy of the premises licence review application is attached as **Appendix A**.
 - b) The review application is supported by representations submitted by the Metropolitan Police and the Licensing Authority in their roles as Responsible Authorities. Copies of the representations are attached as **Appendix B**. Details of the representations are provided in paragraphs 16 to 20, including a supporting representation made by one other person and available in **Appendix C**.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as **Appendix D**. A map of the area that the premises are located in is attached as **Appendix E**.
 - d) A copy of the Council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any Responsible Authority or other person to apply to the local Licensing Authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence allows the provision of licensable activities as follows:
 - The sale of alcohol to be consumed both on and off the premises:
 - Monday to Saturday 10:00 to 23:00
 - Sunday 12:00 to 22:30
 - The provision of late night refreshment (indoors):
 - Monday to Sunday 23:00 to 23:30

- The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Saturday 10:00 to 23:00
 - Sunday 12:00 to 22:30

- The provision of regulated entertainment in the form of live music (indoors):
 - Friday and Saturday 20:00 to 23:00
 - Sunday 16:00 to 22:00

- The provision of regulated entertainment in the form of entertainment similar to live and recorded (indoors):
 - Friday and Saturday 20:00 to 23:00
 - Sunday 16:00 to 22:00.

10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as **Appendix C**.

Designated Premises Supervisor (DPS)

11. The current Designated Premises Supervisor (DPS) named on the licence is Eilish Kemal, who has a personal licence with the London Borough of Southwark.

The Review Application

12. On 15 April 2021, an application was submitted by Southwark's Trading Standards under Section 51 of the Licensing Act 2003, for the review of the premises known as St Georges Tavern – 14 Coleman Road, London, SE5 7TG.

13. The review application was submitted in respect of the prevention of crime and disorder licensing objective and in summary states that the following has been witnessed and / or taken place at the premises:

- “On Friday 02 October 2020 at 21:25hrs, Trading Standards visited the premises with the Police Night Time Economy Team. The front door was locked with a security gate across but it was busy inside. They went to the side entrance which was also not accessible but the person in charge at the time opened it and let them in. Patrons were seated, including a long line of patrons around the bar. Hand sanitiser and QR codes were available along with a book for those who hadn't got the contact tracing app on their phone. They appeared that the premises would be having a lock in after 22:00hrs. No one could operate CCTV. It was also made clear that staff and people living on the premises could not use the bar between 22:00hrs and 05:00hrs the following day. No personal license holder was present as is required by the license. There were two rooms at the back being used to smoke in contrary to the Health Act.

- Conditions breached 789; 836 and 840.
- On 24th October 2020 at 22:20hrs, Trading Standards returned, accompanied by Night Time Economy Police. Karaoke had been reported to be taking place earlier in the day. Blackout boards had been put across the windows but patrons could be heard inside. The police banged on the door to open up and they were let in. The premises was full of patrons, with and no social distancing at the bar, beyond the 22:00hrs curfew. Staff were not wearing masks and there was no table service. Patrons were smoking at the bar. Management were issued a prohibition notice to close the premises and that it was not to re-open until such time as they were operating in a COVID secure way.
- On 21 February 2021 Night Time Economy Police visited and could hear people inside. No one would open the door and they had to break down door, finding patrons hiding in the kitchen.
- On 18 March 2021 Trading Standards visited the premises and issued a £1000 Fixed Penalty Notice. On no occasion has the premises license holder or designated premises supervisor been present.”

14. Prevention of Crime and Disorder:

- 2 October 2020: Licensing Act 2003, Section 136 – breach of license Conditions 836 & 840 as well as breaches of smoke free legislation. Also possible breaches of COVID legislation in respect of seated table service – groups of 6 etc.;
- 24 October 2020: Similar Licensing Act 2003 offences and smoke free legislation + breach of Regulation 15 (1) of the Health Protection (Coronavirus, COVID-19 Alert Level) (High) (England) Regulations 2020 in respect of allowing the premises to be open between 22:00hrs and 05:00hrs;
- 21 February 2021: Patrons drinking on the premises when premises was required to be closed under the provisions of the Public Health (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020;
- 18 March 2021: £1000 fixed penalty notice issued to Patrick Holland. Paid 13 April 2021.

15. Full details of the grounds for the review are provided within review the application. A copy of the review application is attached as **Appendix A**.

Representations from Responsible Authorities

16. There are supporting representations submitted in support of the review application by the Metropolitan Police and the Licensing Authority.
17. The Metropolitan Police supports the review and raises concerns regarding the breaches of licence conditions and the use of the premises contrary to Coronavirus legislation and the smoke-free legislation.

18. The Licensing Authority's representation is made in support of the Police review and draws attention to the history of the premises, breaches of conditions.
19. Copies of the representations are attached as **Appendix B**.

Representations from Other Persons

20. One representation has been received by one other person against the review and in support of the premises stating that the premises is an asset to the community. This representation is attached in **Appendix C**.

Operating History

21. A premises licence was first issued to the premises on 2 October 2005 to Chris Forde.
22. In May 2007, the licence was varied. On 21 December 2010, the licence was transferred to Paul Conway and Michael O'Brien. On 16 December 2011 it was again transferred to only Michael O'Brien. On 25 April 2012 it was transferred to Patrick Williams. On 15 May 2013 it was transferred to John Devly. On 09 April 2014 it was transferred to Fiona Conway. On 16 March 2015 it was transferred to Patrick Holland and the DPS was also varied to Eilish Kemal. On 19 October 2017, the DPS was varied to Leonard Lucas but changed back to Eilish Kemal on 2 July 2019, giving the current licence holder and DPS.
23. On 7 October 2020 Patrick Holland applied for a minor variation to removed condition 836, stating that a DPS should be on the premises at all times that alcohol is served. However, this was rejected as the conditions appears in Annex 3 of the premises licence, conditions attached following a hearing. It would be commonplace for such amendments to be referred back to the licensing sub-committee via a full variation.
24. On 15 April 2021, the current review application was submitted by Southwark's Trading Standards under Section 51 of the Licensing Act 2003.
25. On 6 May 2021, a vary DPS application was received, to change the name to Declan Sweeney. This has been objected to by the Metropolitan Police and will be heard by the Licensing Sub Committee on 10 June 2021.
26. On 07 May 2021, a transfer application was received, to transfer the premises licence to Charles Cleary. This has also been objected to by the Police and will also be heard by the Licensing Sub Committee on 10 June 2021.
27. There have been no TEN applications in the last year.
28. List of recent complaints regarding the premises:

Date	Complainant	Complaint
24/03/2020	Anon Local Resident	Premises still open during lockdown, that if you knock on the door, you will be allowed in.
14/0/2020	Local Resident	Complaint of loud karaoke with large gatherings. Visit by Licensing 24/10/2020 – Prohibition Notice served.

20/10/2020 at 18:17 and 19:40	Local Resident	Complaint of loud music from the premises to Noise Team.
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The local area

29. A map of the local area is attached as **Appendix E**. There are no other licensed premises in the immediate vicinity (100m radius), though there are more licensed premises towards Southampton Row.

Southwark Council Statement of Licensing Policy

30. Council assembly approved Southwark's Statement of Licensing Policy 2021 – 2026 on 25 November 2020.. The policy came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and Scope of the Policy, Which reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications
- Section 5 – Determining Applications for Premises Licences and Club Premises certificates - Which explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
- Section 6 – Local Cumulative Impact Policies, which sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy
- Section 7 – Hours of Operation, which provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification
- Section 8 – The Prevention of Crime and Disorder, which provides general guidance on the promotion of the first licensing objective
- Section 9 – Public Safety, which provides general guidance on the promotion of the second licensing objective
- Section 10 – The Prevention of Nuisance, which provides general guidance on the promotion of the third licensing objective
- Section 11 – The Protection of Children from Harm, which provides general guidance on the promotion of the fourth licensing objective.

31. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

32. Within Southwark's Statement of Licensing Policy, the premises is outside of a Cumulative Impact Policy Area and within a residential area. Under the Southwark Statement of Licensing policy 2021 – 2026, the following closing times are recommended as appropriate within this area for this categories of premises indicated:

- Closing time for restaurants and public houses is 23:00 daily.

Resource implications

33. There is no fee associated with this type of application.

Consultations

34. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

Community Impact Statement

35. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

36. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

37. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

38. Under s.52 the licensing authority must hold a hearing to determine the review and any relevant representations.

39. The four licensing objectives are:

- The prevention of crime and disorder
- The protection of public safety
- The prevention of nuisance
- The protection of children from harm.

40. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
41. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
42. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
43. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
44. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
45. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

46. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

47. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations

- Members of the authority are free to ask any question of any party or other person appearing at the hearing
- The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
- The committee shall disregard any information given by a party which is not relevant:
 - To the particular application before the committee, and
 - The licensing objectives.
- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private
- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

48. This matter relates to the review of the premises licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

49. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

50. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.

51. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on

evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.

52. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
53. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
54. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
55. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
56. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the magistrates' court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

57. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

58. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Representations from responsible authorities
Appendix C	Representation from one other person
Appendix D	Copy of the current premises licence
Appendix E	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	20 May 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	28 May 2021	